IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 250 of 2006

Date of Decision: 13-01-2006

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UNION OF INDIA & 1 - Petitioner(s)
Versus
DHAN VIR PASI SON OF LATE THAKORDAS PASI - Respondent(s)
(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari, Judge

Whether approved for reporting? No

For the Petitioners:
MRS MAUNA M BHATT & MR MANISH R BHATT, Advs.

For the Respondent(s):
MR MS RAO,Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Order of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (CAT) dated 31.8.2005

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Whether reporters of Local Papers may be allowed to see the Judgment? Yes

in Original application No.661 of 2004 with Misc. Application No.168 of 2005 is challenged by petitioners / original respondents in this petition.

2. Shortly stated, respondent was Deputy Commissioner, Income Tax, Special Range Karnal, from April 1992 to December 1992. While he was Additional Commissioner, Range XIX, Mumbai, he was asked to explain Inspection Report dated 22.3.1995 of Inspection Wing by Chief Commissioner, Income Tax, North Western Region, Chandigarh, in 1996. Detailed reply on every aspect of Inspection Report was forwarded on 27.10.1997. Nothing was heard thereafter and respondent was granted promotion during the period from 1992 and even after 1997. Suddenly, he was served chargesheet dated 30.1.2004. Consequently, he challenged the legality and validity of the chargesheet before CAT seeking

quashing thereof.

Respondent also mentions that in execution of Central Board of Direct Tax action plan for the year 1992-93, various Chief Commissioners fixed targets for passing assessment orders. Respondent adopted procedure of sending questionnaires to assesses asking them to send reply thereto along with supporting documents. By adopting this procedure, respondent could dispose of many matters following law laid down by Punjab and Haryana High Court, upheld by the Apex Court. By his innovations, revenue could collect Rs.105 crores, above the targets in newly created TDS Range Company Circle, Mumbai. He is founder member of Mumbai Chapter of International Fiscal Association, incorporated in Netherlands. For long, nothing was heard of the matter. He believed his explanation may have been accepted. Consequently, he did not retain many of the documents relevant to the matter. As a result, he

could obtain few of them later on with great difficulty. As such, he was handicapped in making effective reply to the chargesheet. Further, orders, subject matter of chargesheet, have been passed in quasi-judicial capacity, therefore, something more than mere negligence has to be proved. Mere use of words "malafide exercise of power" in the chargesheet is an attempt to make out something which does not exist on facts and law nor documents and oral evidence cited to substantiate the same. Revenue audit does not comment adversely nor remedial action taken by the Department, which means, there is no loss of revenue.

3. Petitioners submit that interference at preliminary stage be not allowed. Departmental inquiry be allowed to reach logical conclusion. Delay in issuance of chargesheet has been due to compliance of procedure and consultation with C.V.C. At the stage of filing reply to the

chargesheet, delinquent has either to accept or deny the charges. It is not a stage for filing detailed rely with regard to acts of omission and commission. Not taking remedial action and there being no loss of revenue are not defences for misconduct. In paragraph 17 of written statement, it is pointed out that:

> “... Further, the applicant, as assessing officer, was not bound to follow a decision of the jurisdictional High Court which was contrary to the Department's views and which has not been accepted by the Department. The applicant's misconduct is required to be judged with reference to position as obtaining at the time of misconduct, and subsequent events/ judgements cannot be taken into account for that purpose. For the same reasons, the applicant was not justified in following the alleged judgements of the OTAT, without first ascertaining and confirming that these judgements had been accepted by the Department.”

Request for defence documents would be considered by Inquiring Authority. To the grievance that copy of the complaint forming basis of inspection by DDIT, response is that there is no need to supply copy.

4. Before appreciating the contentions advanced by parties, let the following paragraph from Swamy's Compilation, CCS Rules (25th edn.; 2000), Chapter 10, be quoted in addition to the Department of Personnel and Training letter dated 8.12.1982.

> "... During the course of such an enquiry, for the sake of fairness, the Government servant complained against should normally be given an opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation which may render any further investigation unnecessary."

(Letter dated 8.12.1982 of Department of Personnel and Training)

> "... The question has been considered in consultation with the Ministry of Law and the position is clarified as under -
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> (a) The disciplinary authority has the inherent power to review and modify the articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused Government Servant under Rule 14(4) of the CCS (CCA) Rules, 1965.
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> (b) The disciplinary authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further cause to proceed with.
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> 2. It may, however, be noted that the exercise of powers to drop th charges

after the consideration o the written statement of defence by the accused Government servant will be subject to the following conditions:

(a) In cases arising out of investigation by the Central Bureau of Investigation, the CBI, should be consulted before a decision is taken to drop any of, or all, the charges on the basis of the written statement of defence submitted by the accused Government servant. The reasons recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

(b) The Central Vigilance Commission should be consulted where the disciplinary authority proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of or all, the charges on the basis of the written statement of defence submitted by the accused Government servant."

5. Placing reliance on above quoted material,

and Apex Court decision in Z.B.Nagarkar v. Union of India (1999(7) SCC 409), CAT, after examining each Article of Charge with material in support thereof, decided in favour of respondent and against the petitioners holding the allegations inept for initiation of departmental inquiry.

In Z.B.Nagarkar v. Union of India (supra), Apex Court said in paragraphs 40, 41 & 43:

> "40. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab v. Ex-Constable Ram Singh interpreted "misconduct" not coming within the purview of mere error in judgment, carelessness or negligence in performance of duty. IN the case of K.K.Dhawan the allegation was of conferring undue favour upon the

assesses. It was not a case of negligence as such... A wrong interpretation of law cannot be a ground for misconduct. Of course, it is a different matter altogether if it is deliberate and actuated by mala fides.

41. When penalty is not levied, the assesse certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assesse or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed “favour” to the assesse by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to

judicial supervision in appeal.

... ...

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against quasi-judicial authority something more has not been alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall

into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

(emphasis supplied)

6. Petitioners feel aggrieved because respondent decided cases following law laid down by Punjab & Haryana High Court, approved by Apex Court, which had not been accepted by the Department. This assumption is thoroughly unjustified. Once, point of law is decided by Court, particularly, the Apex Court, all are bound to follow it. Otherwise, decisions passed by respondent are quasi-judicial. Petitioners could avail statutory remedy against them in case they were aggrieved by them, instead of resorting to departmental action.

Delinquent is entitled to procedural safeguards while defending himself in a departmental action. Material documents form basis for effective representation, be it at the stage of reply to the chargesheet or during the course of inquiry, they are required to be supplied. Effective representation, he can offer, when he possesses or is supplied material facilitating him in making representation, and make out a case for non framing of charges. This is envisaged by Swamy's Compilation, CCS Rules (25th edn.; 2000), Chapter 10 and Department of Personnel and Training letter dated 8.12.1982, quoted above. Malafides cannot be attributed by mere negligence in quasi-judicial adjudication. Therefore, negligence should be culpable, clearly available from action. Wrong interpretation of law, haste in deciding the

case, in absence of clear evidence of lack of bonafides, is not actionable merely because case is decided quickly or it is decided in favour of a person. No penalty is imposed or less penalty is imposed do not demonstrate culpable negligence amounting to misconduct. Decisions against which avenues for correction are provided by way of appeal, revision, or review, cannot be made subject matter of departmental action in absence of proof of malafides or corruption. While examining whether in the facts of this case, departmental action is called for, CAT has rightly answered it in the negative, recording elaborate reasons with which we are in agreement.

7. Another aspect of the case pertains to delay. Chargesheet has been issued after more

than eleven years. Petitioners could initiate chargesheet immediately after quasi-judicial orders were passed. Delay is so gross that C.V.C. Also highlighted it in its annual report. May be, petitioners were not interested to initiate action, that is why, respondent was not placed under suspension. He got promotion. Having committed delay, rising now and plead seriousness of the matter is something which cannot be appreciated. In State of Punjab v. Chamanlal Goyal (1995(2) SCC 570), Apex Court said:

> "Now remains the question of delay. There is undoubtedly a delay of five and half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They can not be initiated after lapse of considerable

time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound of given room for allegations for bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances.

The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R.Antulay v. R.S.Nayak. Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea

of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that “ultimately the court has to balance and weigh the several relevant factors-balancing test or balancing process – and determine in each case whether the right to speedy trial has been denied in a given case.” It has also been held that, ordinarily speaking, where court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.”

By this time, respondent is stated to have retired from service.

8. No other submission is urged.

9. What emerges out of the aforesaid discussion and examination of impugned order is that case for interference with the impugned order is not made out. Accordingly, petition is dismissed.

(Bhawani Singh)
Chief Justice

(**Abhilasha Kumari**)
Judge

(sunil)